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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

TOM FORESE – Chairman
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR VALUE OF
THE UTILITY PROPERTY OF THE COMPANY
FOR RATEMAKING PURPOSES, TO FIX A JUST
AND REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE SCHEDULES
DESIGNED TO DEVELOP SUCH RETURN.

DOCKET NO. E-01345A-16-0036

IN THE MATTER OF FUEL AND PURCHASED
POWER PROCUREMENT AUDITS FOR ARIZONA
PUBLIC SERVICE COMPANY.

DOCKET NO. E-01345A-16-0123

PROCEDURAL ORDER

BY THE COMMISSION:

On June 1, 2016, Arizona Public Service Company (“APS” or “Company”) filed with the Arizona Corporation Commission (“Commission”) the above-captioned Rate Case Application, which was consolidated with Docket No. E-01345A-16-0123 on August 1, 2016.

Parties to this docket are APS, the Commission’s Utilities Division (“Staff”), Richard Gayer; Patricia Ferré; Warren Woodward; IO Data Centers, LLC (“IO”); Freeport Minerals Corporation (“Freeport”); Arizonans for Electric Choice and Competition (“AECC”); Sun City Home Owners Association (“Sun City HOA”); Western Resource Advocates (“WRA”); Arizona Investment Council (“AIC”); Arizona Utility Ratepayer Alliance (“AURA”); Property Owners and Residents Association of Sun City West (“PORA”); Arizona Solar Energy Industries Association (“AriSEIA”); Arizona School Boards Association (“ASBA”) and Arizona Association of School Business Officials (“AASBO”) (collectively “ASBA/AASBO”); Cynthia Zwick; Arizona Community Action Association (“ACAA”); Southwest Energy Efficiency Project (“SWEEP”); the Residential Utility Consumer Office (“RUCO”); Vote Solar; Electrical District Number Eight and McMullen Valley Water Conservation & Drainage District (collectively, “ED8/McMullen”); The Kroger Co. (“Kroger”); Tucson Electric Power

1 Company ("TEP"); Pima County; Solar Energy Industries Association ("SEIA"); the Energy Freedom
2 Coalition of America ("EFCA"); Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively,
3 "Walmart"); Local Unions 387 and 769 of the International Brotherhood of Electrical Workers, AFL-
4 CIO (collectively, "the IBEW Locals"); Calpine Energy Solutions LLC ("Calpine Solutions")(formerly
5 Noble Energy Solutions, LLC); the Arizona Competitive Power Alliance ("the Alliance"); Electrical
6 District Number Six, Pinal County, Arizona ("ED 6"), Electrical District Number Seven of the County
7 of Maricopa, State of Arizona ("ED7"), Aguila Irrigation District ("AID"), Tonopah Irrigation District
8 ("TID"), Harquahala Valley Power District ("HVPD"), and Maricopa County Municipal Water
9 Conservation District Number One ("MWD") (collectively, "Districts"); the Federal Executive
10 Agencies ("FEA"); Constellation New Energy, Inc. ("CNE"); Direct Energy, Inc. ("Direct Energy");
11 AARP; the City of Sedona ("Sedona"); Arizona Solar Deployment Alliance ("ASDA"); the City of
12 Coolidge ("Coolidge"); REP America d/b/a ConservAmerica ("ConservAmerica"); and Granite Creek
13 Power & Gas and Granite Creek Farms LLC (collectively, "Granite Creek").

14 Parties who wished to do so have filed the Direct Testimony of their witnesses on the Rate Case
15 Application.

16 Numerous public comments have been filed.

17 Current Procedural Schedule

18 The evidentiary hearing in this matter is scheduled to commence on April 24, 2017, at 10:00
19 a.m. at the Commission's Phoenix offices. A pre-hearing conference is set for April 20, 2017, at 2:00
20 p.m., and a public comment hearing is set for March 22, 2017, at 10:00 a.m., also at the Commission's
21 Phoenix offices. In addition, a public comment session is scheduled to take place in Douglas, Arizona
22 on March 15, 2017, from 6:00 p.m. to 8:00 p.m.

23 The current procedural filing deadlines recognize the fact that a Settlement Term Sheet was
24 filed on March 1, 2017, indicating that the following parties are in support of a Settlement Agreement:
25 APS, Freeport, AECC, RUCO, Sun City HOA, WRA, Vote Solar, ASBA, AASBO, AIC, AURA,
26 PORA, AriSEIA, ACAA, Kroger, SEIA, Calpine Solutions, CNE, Direct Energy, EFCA, the Alliance,
27 Walmart, the IBEW Locals, FEA, Sedona, ASDA, Granite Creek, Coolidge, ConservAmerica, and
28 Staff.

Parties to the Settlement Agreement are scheduled to file the Settlement Agreement on March 24, 2017. All parties are scheduled to file Direct Testimony either in support of or in opposition to the Settlement Agreement on April 3, 2017, and Rebuttal Testimony on April 17, 2017.

Mr. Woodward's Third Motion to Compel

On February 28, 2017, Mr. Woodward filed his Motion to Compel Compliance with February 6, 2017 Procedural Order ("Third Motion to Compel").

On March 3, 2017, APS filed its Response to Mr. Woodward's Third Motion to Compel ("Response").

On March 6, 2017, Mr. Woodward filed his Reply to APS's Response ("Reply").

The February 6, 2017 Procedural Order issued in this case stated that because Decision No. 75047 moved the discussion of issues related to the tariff at issue in Docket No. E-01345A-13-0069 to this rate proceeding, the data requested by Mr. Woodward's data requests 2.1-2.8, 2.14, 2.15, 2.21, 2.22, 2.32.c, 2.36, and 2.38 is relevant to the issues in this rate proceeding, and required APS to provide available data to Mr. Woodward in response to those data requests. In his Third Motion to Compel, Mr. Woodward asserts that APS has not answered his Data Requests 2.2¹ and 2.5.²

In its Response, APS asserts that it has responded to Mr. Woodward's Data Requests 2.2 and 2.5 with the only figures APS possesses from the manufacturers of the meters,³ that APS does not independently track meter transmissions; and that pursuant to Rule 34 of the Arizona Rules of Civil Procedure ("Rule 34"), which the Commission has adopted by reference in A.A.C. R14-3-101(A), APS is not required to provide information it does not possess.

In his Reply, Mr. Woodward asserts that because he has not requested the production of any document or tangible thing, Rule 34 is not applicable to this dispute. Mr. Woodward argues that Rule 33 of the Arizona Rules of Civil Procedure ("Rule 33") does apply, because Data Requests 2.2 and 2.5

¹ "Under what scenarios and how often does a node meter transmit outside of the daily schedule, i.e., unscheduled transmission such as on-demand read, tamper/theft alert, last gasp, firmware upgrade, etc.?" Mr. Woodward's Third Motion to Compel at 2.

² "Under what scenarios and how often does a gateway meter transmit outside of the daily schedule, i.e., unscheduled transmission such as on-demand read, tamper/theft alert, last gasp, firmware upgrade etc.?" Mr. Woodward's Third Motion to Compel at 2.

³ For APS's initial and supplemental responses to Mr. Woodward's Data Requests 2.2 and 2.5, see Attachment A to APS's Response.

1 are interrogatories seeking facts and information, and not documents. Mr. Woodward contends that “it
2 is both doable and reasonable (per Rule 33 and ACC Decision No. 75047)” for APS to determine the
3 number of its smart meter transmissions.⁴

4 Whether Mr. Woodward’s Data Requests 2.2 and 2.5 were propounded pursuant to Rule 33 or
5 pursuant to Rule 34, the information requested would necessarily be based upon some sort of record,
6 either electronic or physical. APS has stated that it does not independently track meter transmissions,
7 and that it has responded to Data Requests 2.2 and 2.5 with the only figures it possesses. Arizona’s
8 rules of disclosure are clear that a party is not required to provide information not in its possession.
9 Mr. Woodward has not demonstrated that he has incurred costs caused by inaccurate or incomplete
10 disclosure on the part of APS. The relief requested by Mr. Woodward’s Third Motion to Compel must
11 therefore be denied.

12 IT IS THEREFORE ORDERED that the Motion to Compel Compliance with February 6, 2017
13 Procedural Order filed on February 28, 2017 by Mr. Woodward is hereby denied.

14 IT IS FURTHER ORDERED that each party or prospective party shall **refer to the Rate Case**
15 **Procedural Order** issued in this matter on **July 22, 2016**, for additional information regarding the
16 process to consent to service by email. Information regarding Consent to Email Service is also
17 available on the Commission’s website (www.azcc.gov) by clicking on “Email Service Consent.”

18 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
19 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
20 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
21 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
22 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
23 Law Judge or the Commission.

24
25 ⁴ Decision No. 75047 (April 30, 2015) granted the Applications for Rehearing of Decision No. 74871 (December 18, 2014)
26 filed by Mr. Woodward and Patricia Ferré; rescinded and abrogated Decision No. 74871 pursuant to A.R.S. § 40-253(E);
27 required APS to continue to provide analog meters to those customers who ask for them; required APS to track the
28 unrecovered costs of its continued provision of analog meters; authorized APS to defer those unrecovered costs and to
request recovery in its next rate case; and required APS to provide certain information as outlined in the Decision, in its
next rate case, to assist the Commission in its evaluation of those issues. Decision No. 75047 stated that the actions taken
in the Decision are without prejudice to APS and to the parties to pursue matters in APS’s next rate case, and without
prejudice to Mr. Woodward to pursue his pending complaint against APS in Docket No. E-01345A-14-0113.

1 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
2 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

3 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
4 Communications) applies to this proceeding and shall remain in effect until the Commission's Decision
5 in this matter is final and non-appealable.

6 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
7 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
8 hearing.

9 DATED this 10th day of March, 2017.

10
11 
12 TEENA JIBILIAN
13 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE
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On this 10th day of March, 2017, the foregoing document was filed with Docket Control as a Procedural Order – Denies a Miscellaneous Motion/Request, and copies of the foregoing were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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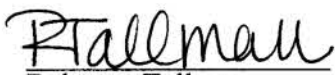
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